



## Staff Summary Report

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**Council Meeting Date:** 5/01/08

**Agenda Item Number:** \_\_\_\_\_

**SUBJECT:** Request approval of a resolution authorizing the execution and delivery of certain agreements; approving an official statement; approving the issuance and sale of Transit Excise Tax Revenue Obligations (not to exceed \$31,000,000), Series 2008; authorizing the taking of all other actions necessary for the immediate consummation of the transactions contemplated; and declaring an emergency.

**DOCUMENT NAME:** (20080501fsjh02) **BOND SERVICE ADMINISTRATION (0203-01)** Resolution No. 2008.36.

**SUPPORTING DOCS:** Yes

**COMMENTS:** The issuance of the not to exceed \$31,000,000 in Transit Excise Tax Revenue Obligations, Series 2008, is in accordance with the capital improvement program budget as adopted by the City Council. The bonds provide financing for Tempe's portion of the construction of the regional light rail system. .

**PREPARED BY:** Jerry Hart, Financial Services Manager (8505)

**REVIEWED BY:** N/A

**LEGAL REVIEW BY:** N/A

**FISCAL NOTE:** The debt service on these bonds will be paid out of the Transit Special Revenue Fund.

**RECOMMENDATION:** Staff recommends approval of Resolution No. 2008.36.

**ADDITIONAL INFO:** N/A

**RESOLUTION NO. 2008.36**

**RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF TEMPE, ARIZONA, AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AGREEMENT, A TRUST AGREEMENT, A CONTINUING DISCLOSURE CERTIFICATE AND AN OBLIGATION PURCHASE AGREEMENT; APPROVING AN OFFICIAL STATEMENT; APPROVING THE SALE, EXECUTION AND DELIVERY OF NOT TO EXCEED \$31,000,000 TRANSIT EXCISE TAX REVENUE OBLIGATIONS, SERIES 2008, EVIDENCING A PROPORTIONATE INTEREST OF THE OWNERS THEREOF IN THE PURCHASE AGREEMENT, AND THE SALE THEREOF TO THE PURCHASER THEREOF; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY FOR THE IMMEDIATE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Tempe, Arizona (the "City"), desires to finance transit system improvements (the "Project") through the execution and delivery of not to exceed \$31,000,000 Transit Excise Tax Revenue Obligations, Series 2008, dated as of the date of initial issuance and delivery (the "Obligations"), by The Bank of New York Trust Company, N.A., as trustee (the "Trustee"), pursuant to a Trust Agreement, dated as of June 1, 2008 (the "Trust Agreement"), between the Trustee and the City, evidencing a proportionate interest of the owners thereof in a Purchase Agreement, dated as of June 1, 2008 (the "Purchase Agreement"), between the Trustee and the City; and

**WHEREAS**, a proposal in the form of an Obligation Purchase Agreement (the "Obligation Purchase Agreement") will be received from RBC Capital Markets Corporation (the "Purchaser"), for the purchase of the Obligations; and

**WHEREAS**, the City Clerk has presented to the Council at this meeting:

- (i) the proposed form of the Purchase Agreement;
- (ii) the proposed form of the Trust Agreement;
- (iii) the proposed form of the Continuing Disclosure Certificate relating to the Obligations (the "Continuing Disclosure Certificate");
- (iv) the proposed form of the Obligation Purchase Agreement; and
- (v) a form of the Preliminary Official Statement relating to the Obligations (the "Preliminary Official Statement"); and

**WHEREAS**, the City has previously caused to be executed and delivered the City of Tempe, Arizona Variable Rate Demand Transit Excise Tax Revenue Obligations, Series 2006 (the "Series 2006 Obligations") pursuant to a Trust Agreement, dated as of June 1, 2006 (the "Series 2006 Trust Agreement"), and evidencing a proportionate interest of the owners thereof in a Purchase Agreement, dated as of June 1, 2006 (the "Series 2006 Purchase Agreement"); and

**WHEREAS**, the City has previously caused to be executed and delivered the City of Tempe, Arizona Variable Rate Demand Transit Excise Tax Revenue Obligations, Series 2007 (the "Series 2007 Obligations"), pursuant to a Trust Agreement dated as of June 1, 2007 (the "Series 2007 Trust Agreement"), and evidencing a proportionate interest of the owners thereof in a Purchase Agreement, dated as of June 1, 2007 (the "Series 2007 Purchase Agreement");

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TEMPE, ARIZONA, THAT:**

**Section 1.     Financing Approved.** It is hereby found and determined that the financing of the Project pursuant to the terms of the Purchase Agreement, the Trust Agreement, and the Obligation Purchase Agreement is in the best interest of and in furtherance of the purposes of the City and in the public interest.

**Section 2.     The Obligations.** The City hereby approves the execution and delivery of the Obligations, as hereinafter described, by the Trustee. The Obligations shall be executed in the aggregate principal amount of not to exceed \$31,000,000. The Obligations shall be in the initial denomination of \$5,000 or any integral multiples thereof, shall be dated their date of initial execution and delivery, and shall bear interest from such date payable on the dates provided in the Trust Agreement, and shall be fully registered without coupons as provided in the Trust Agreement. The Obligations shall bear interest at the rates per annum and mature on the dates and in the amounts as set forth in the Trust Agreement. The Obligations shall mature no later than July 1, 2038.

The forms, terms, provisions for redemption, and other provisions of the Obligations and the provisions for the signatures, authentication, payment, registration, transfer, exchange, redemption and number shall also be as set forth in the Trust Agreement.

**Section 3.     Sale to the Purchaser.** The Obligations shall be sold to the Purchaser pursuant to the Obligation Purchase Agreement.

**Section 4.     Approval of Terms.** The Mayor is authorized to approve the interest rates, interest payment dates, maturity dates, maturity amounts, purchase price and redemption provisions and cause the same to be set forth in the hereinafter approved documents. The form, terms and provisions of the Purchase Agreement, the Trust Agreement, the Continuing Disclosure Certificate and the Obligation Purchase Agreement, in substantially the form of such documents (including the exhibits thereto) presented at this meeting are hereby approved, with such final provisions, insertions, deletions and changes as shall be approved by the Mayor or the Vice-Mayor, the execution of each such document being conclusive evidence of such approval, and the Mayor or the Vice-Mayor and the Clerk are hereby authorized and directed to execute and deliver, where applicable, or approve the Purchase Agreement, the Trust Agreement, and the Obligation Purchase Agreement.

**Section 5.     Official Statement.** The Preliminary Official Statement in substantially the form (including exhibits thereto) presented at this meeting is hereby ratified, approved and confirmed. The City hereby approves, ratifies and authorizes the use by the Purchaser of copies of the Preliminary Official Statement in connection with the public offering

and sale of the Obligations. The City hereby deems the Preliminary Official Statement as final as of its date for purposes of Rule 15c2-12 of the Securities Exchange Commission. The Financial Services Manager is hereby authorized and directed to execute and cause the distribution of a final Official Statement with such additions, deletions, changes or modifications to or from the Preliminary Official Statement as are approved by the Financial Services Manager, whose execution thereof will be conclusive evidence of such approval.

**Section 6. Request to Trustee.** The City hereby requests the Trustee to take any and all action necessary in connection with the execution and delivery of the Purchase Agreement, the Trust Agreement, the Continuing Disclosure Certificate and the Obligation Purchase Agreement and the execution, delivery and sale of the Obligations.

**Section 7. Pledge of Transit Excise Taxes.** The City agrees the Obligations shall be payable from the payments made by the City pursuant to the Purchase Agreement and from other amounts held pursuant to the Trust Agreement. The City hereby, and pursuant to the terms of the Purchase Agreement and Trust Agreement, pledges and grants a first lien on its excise taxes from the .50% transaction privilege (sales) and use tax approved by the voters of the City on September 10, 1996, the use of which is restricted to improvement and operation of the public transit system of the City (the "Transit Excise Taxes"), for the prompt and punctual payment of all amounts to come due under the Purchase Agreement and the Trust Agreement. The City's obligation to make the payments under the Purchase Agreement or the Trust Agreement does not constitute an obligation of the City or the State of Arizona, or any of its political subdivisions, for which the City or the State of Arizona, or any of its political subdivisions, is obligated to levy or pledge any form of taxation, other than the obligation to levy Transit Excise Taxes, nor does the obligation to make such payments or any other payments under the Purchase Agreement or the Trust Agreement constitute an indebtedness of the City or of the State of Arizona or any of its political subdivisions within the meaning of the Constitution of the State of Arizona or otherwise. The pledge of the Transit Excise Taxes is on parity with the pledge thereof pursuant to the Series 2006 Purchase Agreement, for the payment of the Series 2006 Obligations and obligations to reimburse the liquidity facility provider with respect to the Series 2006 Obligations arising out of draws under the liquidity facility with respect to the Series 2006 Obligations and the Series 2007 Purchase Agreement, for the payment of the Series 2007 Obligations and obligations to reimburse the liquidity facility provider with respect to the Series 2007 Obligations arising out of draws under the liquidity facility with respect to the Series 2007 Obligations.

**Section 8. Resolution a Contract and Confirmation of Immediate Effectiveness.** After any of the Obligations are delivered by the Trustee to the Purchaser thereof upon receipt of payment therefor, this resolution shall be and remain irrevocable until the Obligations and the interest and premium, if any, thereon shall have been fully paid, cancelled and discharged. Section 2.16 of the City's Charter provides that all resolutions are effective immediately upon adoption unless otherwise specified in the resolution. This resolution is effective immediately to allow the consummation of the transactions contemplated by this resolution, including the delivery of the Obligations, within thirty (30) days of the date of this resolution in order to not adversely affect the life, health, property and public peace.

**Section 9. Officers Authorized.** The Mayor and the Clerk and the Financial Services Manager and the other officers of the City, on behalf of the City, are each hereby

authorized and directed, without further order of the Council, to execute and deliver such certificates, proceedings and agreements as may be necessary or convenient to be executed and delivered on behalf of the City, to evidence compliance with, or further the purposes of, all the terms and conditions of this resolution and the consummation of the transactions contemplated by the Preliminary Official Statement. In the event that the Mayor is unavailable, the Vice Mayor or any other member of the Council may discharge the duties of Mayor hereunder.

**Section 10. Severable Provisions.** If any section, paragraph, clause or phrase of this resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or phrase shall not affect any of the remaining provisions of this resolution.

**Section 11. Waiver of Inconsistency.** All orders, resolutions and ordinances or parts thereof inconsistent herewith are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any order, resolution or ordinance or any part thereof.

**Section 12. Emergency Clause.** The immediate operation of the provisions hereof is necessary for the preservation of the public peace, health and safety and an emergency is hereby declared to exist and this Resolution will be in full force and effect from and after its passage by the Mayor and Council and it is hereby exempt from the referendum provisions of the Constitution of the State of Arizona.

**PASSED AND ADOPTED by the Mayor and Council of the City of Tempe,  
Arizona, this 1st day of May, 2008.**

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**Mayor**

**ATTEST:**

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**Clerk**

**APPROVED AS TO FORM:**

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**City Attorney**